

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CHAD MCCUNE AND CARMEN MCCUNE, §
INDIVIDUALLY AND AS NEXT FRIENDS OF §
J.M., A MINOR, AND STEPHEN D. HOWEN, §
ESQ., AS THE CURRENT GUARDIAN §
AD LITEM OF PLAINTIFF J.M., A MINOR, §

PLAINTIFFS,

V.

GRACO CHILDREN'S PRODUCTS, INC.;
WAL-MART STORES, INC.; AND
WAL-MART STORES EAST, INC.,

DEFENDANTS.

[illegible]

§ CIVIL ACTION NO. 5:2009cv00107

AGREED SCHEDULING ORDER

After reviewing the report from the parties required by Fed.R.Civ.P.26(f), the court hereby enters the following Scheduling Order pursuant to this court's Local Rule CV-16 and Fed.R.Civ.P.16:

- (1) The parties have agreed to exchange their initial Rule 26(a)(1) disclosures by **February 22, 2010**.
- (2) Other parties shall be joined by **June 14, 2010**. (A motion for leave to add parties is not necessary provided parties are added by this date, otherwise, leave of court is required. The date to add parties should be at least 60 days before the deadline for filing motions listed in (3) below.)
- (3) Amended pleadings shall be filed by **June 14, 2010**. The Wal-Mart defendants have raised as an issue that the present Wal-Mart entities named as defendants may not be the technically correct legal entities to serve as defendants in this matter. The parties have agreed that once the correct Wal-Mart entities have been confirmed, if a substitution of parties is necessary, such a substitution will be done by stipulation and the Amended Complaint to make such substitution will be unopposed. Furthermore, counsel for defendants have agreed to accept service of the Amended Complaint. (A motion for leave to amend is not necessary if filed before this date; however, this date should be at least 30 days before

the deadline for filing motions listed in (3) below.)

- (4) All motions to transfer, motions to remand, motions to dismiss, motions for summary judgment, or other dispositive motions, and *Daubert* motions shall be filed by **March 15, 2011**. (In order for the court to make a ruling on these motions before the final pre-trial conference, this date should be at least 60 days before the final pre-trial conference.)
- (5) Disclosure of expert testimony pursuant to Fed.R.Civ.P.26(a)(2) and Local Rule CV-26(b) shall be made by the plaintiff by **October 1, 2010**, and by the defendant by **November 30, 2010**. Rebuttal reports shall be made by **January 15, 2011**. Thereafter, each party shall have until **January 31, 2011** to object to adequacy of report of any other party's expert witnesses. Such objections shall be made by a motion to strike or limit expert testimony and shall be accompanied by a copy of the expert's report in order to provide the court with all of the information necessary to make a ruling on any objection.
- (6) Pre-trial disclosure pursuant to Fed.R.Civ.P. 26(a)(3) shall be made by the plaintiff by November 30, 2010, and by the defendant by **March 31, 2011**. Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition, designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the court for good cause.
- (7) All discovery shall be commenced in time to be completed by **March 1, 2011**. (This date should be a date at least 90 days before the final pre-trial conference (10).)
- (8) This case shall be mediated by **February 1, 2011**. If the parties agree on a mediator, they shall so notify the court in writing of the name, address, and telephone number of the mediator by **January 1, 2011**. Otherwise, the court will select a mediator.
- (9) A Joint Final Pretrial Order prepared in accordance with Local Rule CV-16(b) and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings of Fact and Conclusions of Law in non-jury cases) shall be delivered by the plaintiff to the court by **May 20, 2011**. (This date should be a date at least 10 days before the final pre-trial conference.) In order to enable the plaintiff to prepare and deliver the Joint Final Pretrial Order and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings

of Fact and Conclusions of Law in non-jury cases) to the court, and to enable the defendants and any third-parties to participate in the preparation of such documents, the plaintiff shall provide the plaintiff's share of the necessary information to all other parties by **May 2, 2011**. Thereafter, all defendants and third-parties shall provide their share of the information to plaintiff by **May 9, 2011**. Parties are strongly encouraged to limit total deposition time to no more than one hour per deposition to be read or shown in court.

- (10) Any motions in limine shall be filed by **May 20, 2011**. (This date should be at least 10 days prior to the final pre-trial conference date (10).)
- (11) This case is set for a final pre-trial conference on **June 6, 2011**. (Select a date from the enclosed list of final pre-trial conference dates.)
- (12) Jury selection to begin on **June 7, 2011**. (Day after pre-trial conference)

OTHER LIMITATIONS. All depositions to be read into evidence or shown in court as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence or shown in open court. Parties are strongly encouraged to limit total deposition time to no more than one hour per deposition to be read or shown in court.

SIGNED this 25th day of January, 2010.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE